

CALDWELL, WRIGHT
ENTERPRISES, INC.,

Plaintiff,

vs.

AVADIM HEALTH, INC.,

Defendant.

VS.

AVADIM HEALTH, INC.,)
)
 Defendant.)
)

I. Background Relevant to the Motion

In approximately March of 2014, Plaintiff (which was known at the time as “Athletes Advantage Sports Products, Inc.”) entered an agreement with Defendant whereby Plaintiff agreed to market and sell certain of Defendant’s products. Compl. ¶¶ 11 – 14.

Subsequently, in approximately July of 2015, Plaintiff and Defendant entered an Agreement of Purchase and Sale (“Purchase Agreement”) through

which Plaintiff sold its assets and operations to Defendant. Id. ¶¶ 15 – 16. A term of the Purchase Agreement required Defendant to pay Plaintiff a portion of the payments received by Defendant resulting from the sales, licensing, private labeling, and/or distribution of products specifically 1) intended for topical use and 2) marketed for use by athletes or in connection with athletics, sports, training or exercise. Id. ¶¶ 17 – 18.

Plaintiff alleges that Defendant failed to make all of the required royalty payments and/or provide reports supporting those payments. Id. ¶¶ 28 – 32.

A Pretrial Order and Case Management Plan was entered on January 2, 2019. (Doc. 20).

On or about February 21, 2019, Plaintiff issued a document subpoena (“Subpoena”) to nonparty Guthy-Renker LLC, a marketing agency with which Defendant contracted to market its products. The Subpoena, a copy of which is attached to the Motion, seeks documents held by Guthy-Renker LLC that pertain to its interaction with Defendant and the marketing and sale of Defendant’s products.

Defendant filed the instant Motion on March 7, 2019 (Doc. 22) along with a supporting memorandum (Doc. 23). Plaintiff responded on March 21, 2019 (Doc. 26). Defendant has not filed a reply in support of the Motion.

On April 11, 2019, the matter was stayed pending a ruling by the District Court on Defendant’s Motion to Compel Arbitration.

The District Court's ruling on that Motion, issued on May 22, 2019, stated in part as follows:

In light of the Defendant's counterclaim seeking rescission, the Court will lift the stay in this matter so as to allow the parties to conduct discovery and to file dispositive motions regarding the threshold issue of the agreement's validity. Once the Court has made a determination regarding the validity of the agreement, the Defendant may renew its motion to compel arbitration.

May 22, 2019 Order (Doc. 34) at 3 (emphasis added).

II. Discussion

The information Plaintiff seeks from Guthy-Renker LLC by way of the Subpoena concerns the sales of Defendant's products and Defendant's relationship with Guthy-Renker LLC. Regardless of whether this type of information may be relevant for other purposes (and the undersigned expresses no opinion on that point at this time), it does not appear to be pertinent to the specific issue the parties have been allowed by the District Court to explore, to wit: "the threshold issue of the agreement's validity."

Accordingly, the "Motion to Modify or Quash Subpoena on Guthy-Renker LLC" (Doc. 22) is **GRANTED** and the Subpoena is **QUASHED**. This ruling is not intended to restrict Plaintiff's ability to seek what it believes to be

discoverable information from Guthy-Renker LLC, or Defendant's ability to object to such efforts, should general discovery be opened in the future.

Signed: July 18, 2019

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

